IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.524 Of 2000.
Judgment reserved on 14.8.2007
Date of decision: August 16th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Suresh Kumar. ……. Respondent.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K. Verma,Addl. Advocate General.

For the respondent: Mr. Rajesh Raghuwanshi, Advocate.

Surinder Singh, J:

The respondent was put on trial under Section 279 and 337 of the Indian Penal Code, in case No.47/2 of 1995 and on 12.5.2000, he was acquitted by the learned trial court.

The judgment of acquittal has been assailed in this appeal on the ground that the learned trial court did not appreciate the evidence of the prosecution in the right perspective and it also set an unrealistic standard to appreciate the evidence of the prosecution.

Heard and gone through the record of the case.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

In short, the prosecution case has been that on 20.5.1995, a CTU Bus No.CH-01-G-5201 was going from Shimla to Delhi, which was being driven by complainant Paramjit Singh (PW1) and Ashwani Kumar was the conductor with him. When the said bus reached Jhokri at a deep curve at about 9.15 a.m., a truck bearing No.HPS-7149, came on the wrong side and the respondent was the driver of the truck, was allegedly rash and negligent in driving the said truck, with the result it collided with the aforesaid bus on the left side and after hitting the bus, he lost the control and suddenly turned the truck towards the left side and then it got struck with the hill and over-turned on the national highway. The driver of the truck and its cleaner sustained the injuries. The injured were taken to the hospital for medical treatment. The windowpanes of the bus were damaged. Statement of Paramjit Singh aforesaid was recorded under Section 154 of the Code of Criminal Procedure, on the basis of which FIR was registered. The police took into possession both the vehicles. Photographs of were taken, medical certificates of the injured were procured. Mechanical examination was conducted by PW9 Amar Chand and his report is Ext.PW8/A. After recording the statements of the witnesses under Section 161 of the Code of Criminal Procedure, the challan was put in the court.

Notice of accusation was put to the respondent. He pleaded not guilty and claimed trial. Prosecution examined their witnesses to prove the charges. The case of the respondent under Section 313 of the Code of Criminal Procedure has been total denial. The learned trial court upon

hearing the parties and going through the record of the case, acquitted the respondent, on the ground that the rash and negligent act of the respondent was not proved by the prosecution. Further the writings, which were alleged to have been given by the passengers of the Bus were not placed on the record nor the photographs were proved. The bus has not been shown in the spot map Ext.PW9/A, nor its photographs were taken. The prosecution has failed to prove the circumstances and fact of the accident by which the accident took place and further that the prosecution has also not cited the cleaner of the bus as a witness and as far as Section 337 of the Indian Penal Code is concerned, these injuries were not proved having been sustained in the accident. Accordingly, the respondents was given the benefit of reasonable doubt.

I have reappraised the evidence on record. The basis recorded for the acquittal by the learned trial court are absolutely incorrect, insofar as the Section 279 of the Indian Penal Code is concerned.

At the very outset, I would like to say that the bus has been shown in the site plan Ext.PW9/A and the conductor of the bus Shri Ashwani Kumar has been examined as PW2. Therefore, to this effect, the findings of the learned trial court are incorrect. Non-production of the writings of the passengers given to the bus conductor is not fatal to the case of prosecution. It is stated by PW2 that these were taken only for the office use. Further PW1 Parmarjit Singh has categorically deposed that the truck was on the wrong side, on the deep curve sufficiently wide, it hit the bus and

thereafter it turned towards the hill and hit the side of the road, then it overturned on the national highway. The photographs of the truck were also taken by the police. He further stated that the accident had taken place because of the rash and negligent driving of the truck driver (respondent). This fact was also supported by the conductor of the bus (PW2) who has categorically stated that the accident in question had taken place on account of rash and negligent driving by the respondent, as the respondent could not control the truck on account of the high speed.

The main question in the instant case is whether the respondent was the driver of the truck and was responsible for the accident in question on account of his rash and negligent driving? Though respondent has denied in his statement under Section 313 of the Code of Criminal Procedure that he was not driving the said truck at the relevant time and even denied the accident, whereas, PW4 Prem Singh and bus conductor (PW2) read with the statement of the Mechanic and his report Ext.PW8/A which corroborates the case of the prosecution in material particulars proves beyond a reasonable doubt that respondent was the driver of the truck and it caused the accident as alleged, which has not been disputed in the cross-examination of the prosecution witnesses. The respondent has not explained the circumstances, which were attendant upon him. There is an overwhelming evidence on record to prove the charge under Section 279 of the Indian Penal Code, whereas, the respondent has failed to prove due care and caution to avert the accident.

The learned trial court was not justified to acquit the respondent for this charge on the grounds, which were not born out from the record. Therefore, the judgment of acquittal passed by the trial court is held to be perverse insofar as the offence under Section 279 of the Indian Penal Code is concerned. Accordingly it is set-aside consequently, the respondent stands convicted for the offence under Section 279 of the Indian Penal Code.

Whereas, the acquittal of respondent under Section 337 of the Indian Penal Code is upheld on the grounds mentioned in the impugned judgment holding that in absence of the examination of Truck Cleaner, the MLC Ext.PW6/A could not be connected and it is not proved that he had sustained the injuries in the said accident. The said Medico legal certificate is of no consequence. In result the appeal is partly allowed and the respondent stands convicted under Section 279 of the Indian Penal Code, whereas, his acquittal under Section 337 of the Indian Penal Code is upheld. He shall be heard on the point of sentence.

August 16, 2007. **(Surinder Singh)**
(PDS) **Judge**.

I have heard Shri Rajesh Raghuwanshi, learned counsel for the respondent on the point of sentence. According to him, the accident had taken place in the year 1995, i.e. about 12 years back. The respondent has faced, the torture of trial for a period of about 5 years before the trial court and uncertainty of appeal for 7 years. The respondent is a sole

bread earner of his family and he has not committed any similar offence earlier. Since there is no history of criminal cases against him, therefore, he may be dealt with leniently.

I have considered the aforesaid arguments of learned counsel for the convict-respondent. It is a matter of common knowledge that the accidents are rampant on the public roads, due to the rash and negligent driving of the Motorists, who flout the traffic rules with impunity and lacks road sense. It is right time to check such a menace, therefore, I am not inclined to give him the benefit under Probation of Offenders Act, however, keeping in view the time taken in conclusion of the trial and proceedings in the appeal for more than a decade, in my opinion, the interest of justice would be met, if the respondent is sentenced **till rising of the court** and to pay a fine of Rs.1,000/- in the circumstances. In default of payment of fine, the convict-respondent shall undergo simple imprisonment for a period of one month.

The respondent shall make him present before the trial court and shall deposit the fine amount within a month from today. The learned trial court shall ensure the compliance of this order.

August 16, 2007. **(Surinder Singh)**
(PDS) **Judge**.